

The FCC never addressed the implications of its "competitively neutral" holding on CMRS providers and how CMRS providers, with their unique infrastructure and economics, might participate in Lifeline and Link-Up programs. Accordingly, on reconsideration, the FCC should adopt specific, inclusive rules on CMRS participation in state and federal Link-Up and Lifeline programs.^{35/}

D. Federal Universal Service Funding Should Act as a Cap on State Universal Service Programs

Because of the USF rates coming out of several states (Kansas USF set at 14.1%; Georgia USF set at 5%) far exceed the apparent interstate USF rate of approximately 1-2%, the FCC has to take actions to ensure that the overall program reflected in Section 254 is not funding extravagant or unrelated state functions above and beyond supporting state high cost and Lifeline/Linkup services. Specifically, the FCC rules should provide that the interstate assessment rate operates as a cap on any CMRS state universal service obligation. Any other approach rewards inefficient incumbent LECs by shifting a significant number of dollars from CMRS providers to sustain the profit margins of rural telephone companies.^{36/} Because of the slow pace of reform and the lack of meaningful local

^{35/} On reconsideration, the FCC also needs to take close account of section 254(f) which specifies that if states have Lifeline or Link-Up programs, these programs cannot be "inconsistent with the Commission's rules. . ." 47 U.S.C. § 254(f).

^{36/} Indeed, Pennsylvania PUC recently adopted an order that shields rural LECs from competition for as long as five years. See Petition of Rural and Small Incumbent Local Exchange Carrier for Commission Action Pursuant to Section 251(f)(2) and 233(b) of the Telecommunications Act of 1996, *Opinion and Order*, Dkt. No. P.00971177 (Jul. 10, 1997).

competition that will emerge in some rural areas, non-ILECs will be funding ILEC inefficiencies for some time to come. If a state sets a USF contribution rate that is higher than the federal rate, the FCC should allow CMRS providers to offset their interstate contributions on a dollar for dollar basis. This method will ensure that CMRS will be subject to predictable and uniform universal service obligations across their service areas, consistent with the requirements of the 1993 Budget Act.

Further, the FCC should require that all providers pass universal service contributions through to their end-user customers. The *Order* suggested pass throughs would be permitted but discouraged based on a concern the charge might be misconstrued by customers.^{37/} The 1996 Act is silent on this question. Absent a statutory prohibition upon end-user surcharges in the 1996 Act, the Commission must recognize that the mandatory contribution requirement functions like a tax (a surcharge on carrier revenue) and should be explicitly collected by recovery from end users (particularly because assessments are based on end-user revenue).^{38/} As previously noted, some providers, particularly ILECs, based on holdover regulatory incumbent advantages, will have a wide variety of options, including burying universal service charges that they do not recover

^{37/} See *Order* at ¶ 853. The *Order* took issue with the notion that compelled contributions could fairly be characterized as mandatory. The Petitioners share the FCC's concern about misleading customers, but do not believe that a labeling of the new USF charge as mandatory is misleading.

^{38/} See Separate Statement of Commissioner Rachelle B. Chong, Joint Board Recommendation, at 10 ("It is not the telecommunications carriers, but the users of telecommunications services to whom these costs will be passed through in a competitive marketplace.").

from their access customers in some portion of an end-user's bill. However, CMRS companies, who are in already competitive markets or other carriers whose service demand is elastic, may not be able to absorb or to shift the burden of universal service contributions in the same way ILECs can. Contrary to the FCC's assumptions, these carriers have no choice. They must pass any universal service contribution along to end users in the form, unfortunately, of a higher effective service rate. The failure of all carriers to provide explicit disclosure of these charges on end-user bills creates enormous marketing advantages that fly in the face of the critical basic competitive neutrality principle. To ensure competitive neutrality, the FCC must require that all providers contributing to federal or state universal service programs represent those charges as a separate line charge on an end-user's bill that clearly identifies the charge as a universal service contribution that is, in fact, mandatory.

IV. FCC MUST ESTABLISH REASONABLE POLICING MECHANISMS FOR AUDITING AND IDENTIFYING MISUSE OF UNIVERSAL SERVICE FUNDS

Universal service funding constitutes a redistribution of revenues among carriers not based on who is the most efficient provider but on who serves the customer today and has high regulated book costs. The pace of reform in rural areas will be very slow, and universal service contributions to high costs and rural ILECs are likely to continue well into the future, resulting in substantial amounts being transferred to many, many companies with little or no continuing oversight. As payors without the immediate

prospect of being USF participants, the Petitioners have concerns about how rural ILECs (or other recipients) may choose to spend what they receive.

In order to ensure public and telecommunications payor confidence in the operation of the universal service programs, the FCC must set rules to closely monitor the use of funds by recipients. While it is helpful that the *Order* directs the future administrator of the universal service support mechanism to maintain and report to the Commission detailed information relating to payments made and received through the programs and to make those reports public on at least an annual basis, these reports are not audit requirements. Nor is there any indication that unusual payments will trigger an audit process and recoupment for the misuse of USF funds.^{39/} These reports will not be sufficiently detailed to determine whether abuses are occurring and the extent to which misuse of funds is pervading either the federal or state programs. While the reports are supposed to track the receipt of funds, they will not attempt to address the far more important question of the propriety of the use of the funds. The Petitioners urge the FCC to formulate a comprehensive auditing and recoupment mechanism, as logic would dictate for any entitlement program involving billions of dollars.^{40/} Additionally, procedures should be established to provide refunds to fund contributors in cases where fraud or misuse is found to exist.

^{39/} See *Order* at ¶ 869.

^{40/} An FCC program involving far less money (and no mandatory contributions), the FCC's PCS C and F Block auction rules, contained a basic beneficiary audit requirement. The FCC surely can do no less and is obligated to do more here.

V. OTHER CMRS-SPECIFIC ISSUES MUST BE ADDRESSED ON RECONSIDERATION

The FCC's cursory analysis of CMRS-specific issues failed to resolve several nuts and bolts issues specific to CMRS carrier contributions to universal service funding mechanisms. CMRS services are typically priced very differently than landline services and these differences should not be the pretext a state commission uses to deny CMRS providers the opportunity to participate in state USF programs.

One example of an important difference that FCC rules must account for is the broad CMRS local calling area that provides "local" calling over a much larger geographic area than a landline LEC. CMRS providers typically charge their customers usage based rates even for local calls, while LECs provide flat rate local service. The FCC must determine a method that permits both carriers to continue operating on the basis that they do today without forcing any carrier to imitate another to get access to funding for supported services.

The FCC should understand the difficulties CMRS providers face when they attempt to identify end-user revenues for purposes of calculating a carrier's universal service contribution. CMRS carrier internal billing systems do not separately identify resellers of their services. Cellular systems treats resellers as they are properly treated from an accounting perspective — as high volume end users. However, resellers have independent universal service obligations and are to be excluded from the CMRS provider's USF

obligations.^{41/} CMRS providers should not be forced to satisfy the universal service obligations of their reseller customers if these customers have failed to appropriately identify themselves.^{42/} Accordingly, the FCC should provide explicit guidance as to how CMRS providers should identify the revenue base, excluding resellers, that will be subject to the federal universal service obligation. The Petitioners suggest that one means would be by allowing facilities-based carriers to require that all resellers sign a contract or other acknowledgment that they are operating as a resale carrier.

VI. CONCLUSION

Only by encouraging broad and competitively neutral participation in the delivery of universal services can the FCC and the states create the benefits of competition for consumers. For the reasons set forth above, the Petitioners respectfully request that the Commission reconsider critical aspects of the *First Report and Order* in the Universal

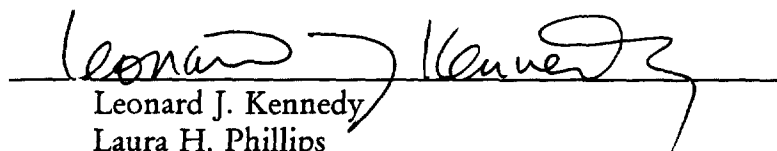
^{41/} See *Order* at ¶ 166.

^{42/} The current universal service mechanism results in having the burden of universal service trickle down to the last carrier who has the direct relationship with the subscriber. If this reseller has shielded its carrier status from the CMRS provider, it can escape passing the USF charge onto its end user, creating a significant competitive disparity between the wholesaler and retailer.

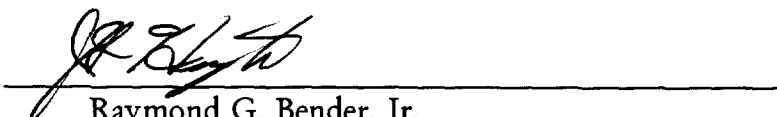
Service proceeding that bear on non-discrimination and competitive neutrality of USF programs for CMRS providers and adopt proposals in accordance with this petition.

Respectfully submitted,

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July 17, 1997

CERTIFICATE OF SERVICE

I, Cynthia S. Shaw, do hereby state that I caused the foregoing "**JOINT PETITION FOR RECONSIDERATION**" to be sent by hand-delivery, this 17th day of July, to the following:

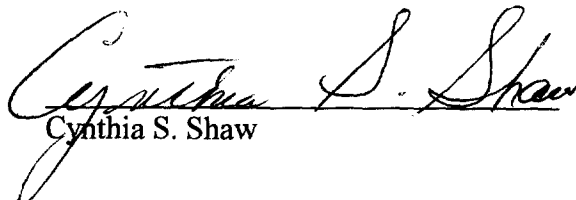
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